

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EVY GRU, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

AXSOME THERAPEUTICS, INC., HERRIOT
TABUTEAU, NICK PIZZIE, MARK
JACOBSON, CEDRIC O’GORMAN, and
KEVIN LALIBERTE,

Defendants.

Case No. 1:22-cv-03925-LGS

NOTICE OF NON-OPPOSITION TO THE MOTION OF THE AXSOME INVESTOR GROUP
FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF CO-LEAD COUNSEL

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

As set forth below, Lead Plaintiff Movant the Axsome Investor Group¹ respectfully advises the Court that no party opposes the Axsome Investor Group's motion, pursuant to the PSLRA and the Court's New Lead Plaintiff Order (Dkt. No. 66), for the entry of an Order: (1) appointing the Axsome Investor Group as Lead Plaintiff for the Class in the Action; and (2) approving the Axsome Investor Group's selection of Pomerantz and Rosen Law as Co-Lead Counsel (the "Lead Plaintiff Motion") (Dkt. No. 67).

This Action is a putative securities class action governed by the PSLRA, including the statutory provisions governing the appointment of a Lead Plaintiff. *See* 15 U.S.C. § 78u-4(a)(3)(A)-(B). The PSLRA requires the plaintiff who files an action governed by its provisions to publish a notice (the "Notice") to the class within 20 days of filing the action, informing putative class members of: (1) the pendency of the action; and (2) their right to file a motion for appointment as lead plaintiff within 60 days after publication of the Notice. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i).

Here, the original deadline to file a motion for appointment as lead plaintiff in the Action, pursuant to the initially issued statutory Notice of this Action, was July 12, 2022. *See* Dkt. No. 69 at 5-6. On November 15, 2023, the Court entered the New Lead Plaintiff Order directing, *inter alia*, the reopening of the PSLRA's lead plaintiff appointment process, the publication of a Renewed Notice within 5 days of the entry of the New Lead Plaintiff Order to members of the new putative Class alleged in the proposed SAC (Dkt. No. 57-2), and that "[a]ny interested person may file a motion seeking appointment as Lead Plaintiff in this action under the [PSLRA] within 21 days from the date of . . . publication of" the Renewed Notice. Dkt. No. 66 ¶¶ 1-4.

¹ All capitalized terms herein are defined in the Axsome Investor Group's moving brief (Dkt. No. 69), unless otherwise indicated.

On November 16, 2023, counsel for Gru published the Renewed Notice pursuant to the New Lead Plaintiff Order. *See* Dkt. No. 70-2 at *2-3. Pursuant to the New Lead Plaintiff Order, any member of the Class alleged in the proposed SAC had until December 7, 2023 to seek appointment as Lead Plaintiff in the Action (*see* Dkt. No. 66 ¶ 1), and the Renewed Notice accordingly advised members of the Class alleged in the proposed SAC of this new deadline (*see* Dkt. No. 70-2 at *2).

On December 7, 2023, the Axsome Investor Group filed its Lead Plaintiff Motion. *See* Dkt. No. 67. No competing motions to the Axsome Investor Group's Lead Plaintiff Motion were filed. All proposed Lead Plaintiffs purchased within the revised Class Period, and all allegedly suffered damages by holding shares upon the revelation of the alleged fraud.

Therefore, the Axsome Investor Group's Lead Plaintiff Motion is unopposed. Pursuant to the New Lead Plaintiff Order, "[a]ny person who timely ma[de] a motion for appointment to be Lead Plaintiff" by the reopened December 7, 2023 lead plaintiff motion deadline "ha[d] 14 days from the date of such motion [*i.e.*, until December 21, 2023] to file a memorandum of law in opposition to the motion of any other movant[.]" Dkt. No. 66 ¶ 4. Since only the Axsome Investor Group moved by the reopened December 7, 2023 lead plaintiff motion deadline, pursuant to the New Lead Plaintiff Order, there were no other eligible competing movants that could have opposed the Axsome Investor Group's Lead Plaintiff Motion. *See id.* Moreover, no opposition to the Axsome Investor Group's Lead Plaintiff Motion was filed by the December 21, 2023 deadline.

For the foregoing reasons, and for the reasons set forth in the Axsome Investor Group's moving brief (Dkt. No. 69), the Axsome Investor Group respectfully requests that the Court enter

the [Proposed] Order Appointing Lead Plaintiff and Approving Co-Lead Counsel, submitted as Dkt. No. 68.

Dated: December 28, 2023

Respectfully submitted,

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